

The regular meeting of the City Council was held in the Council Chambers at City Hall on September 16, 2008 at 7:00 p.m. after the 6:30 p.m. work study caucus session, where the Council discussed pending agenda items; reviewed local letting of Depot renovation; elaborated on the Sons of American Legion celebration; updated Council on demolitions on east side of DeWitt Avenue – adjourned at 6:48 p.m.. Council members who physically attended the caucus session were: Mayor David Cline and Commissioners Randy Ervin, Rick Hall, Joe McKenzie, and David Schilling. City staff who physically attended were: City Administrator Alan Gilmore, Attorney & Treasurer Preston Owen, Public Works Director David Wortman, Community Development Coordinator Kyle Gill, Fire Chief Mike Chism, Deputy Police Chief Jeff Branson, and City Clerk Susan O’Brien.

Mayor Cline presiding.

Mayor Cline led the Pledge of Allegiance.

The following members of the Council answered roll call physically present: YEA Commissioner Randy Ervin, YEA Commissioner Rick Hall, YEA Commissioner Joe McKenzie, YEA Commissioner David Schilling, YEA Mayor David Cline.

Also physically present were City personnel: City Administrator Alan Gilmore, Attorney & Treasurer Preston Owen, Public Works Director David Wortman, Community Development Coordinator Kyle Gill, Fire Chief Mike Chism, Deputy Police Chief Jeff Branson, Technology Coordinator Brian Johanpeter, and City Clerk Susan O’Brien.

Mayor Cline seconded by Commissioner McKenzie moved to approve the consent agenda consisting of minutes of the regular meeting September 2, 2008; fire department and finance reports for the month of August, 2008; payroll and bills for the first half of September, 2008.

Bills and payroll for the first half of September, 2008

General Fund

Payroll	\$	258,937.72
Bills	\$	<u>152,444.16</u>
Total	\$	411,381.88

Hotel Tax Fund

Payroll	\$	1,618.08
Bills	\$	<u>722.90</u>
Total	\$	2,340.98

Festival Management

Bills	\$	<u>108.00</u>
Total	\$	108.00

Midtown TIF Fund

Bills	\$	<u>14,860.50</u>
Total	\$	14,860.50

I-57 East TIF District

Bills	\$	<u>34.00</u>
Total	\$	34.00

Water Fund

Payroll	\$	30,480.60
Bills	\$	<u>21,253.55</u>
Total	\$	51,734.15

Sewer Fund

Payroll	\$	31,058.82
Bills	\$	<u>47,551.80</u>
Total	\$	78,610.62

Cemetery Fund

Payroll	\$	4,673.93
Bills	\$	<u>369.50</u>
Total	\$	5,043.43

Motor Fuel Fund

Bills	\$	<u>2,569.50</u>
Total	\$	2,569.50

Health Insurance

Bills	\$	<u>84,571.57</u>
Total	\$	84,571.57

Mayor Cline declared the motion to approve the consent agenda carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Mayor Cline opened the floor for public discussion. Mr. Herb Meeker of the Mattoon Journal Gazette questioned the Council with regard to the train parked on the east side of town with a response from attendees of no current federal statute regulating trains on tracks.

The presentation by Brian Daniell of West & Company on the City's Fiscal Year 2007/2008 Audit consisted of reviewing revenues of all governmental funds and proprietary funds (Water, Sewer, Cemetery) with comments from City Attorney & Treasurer Owen. Council discussed the audit. Mr. Daniell stated the City would have a clean audit report, re-iterated the major expense of the City as funding the fire and police pensions, and the large footnote of post –employment benefits. Council discussed pensions in the City and private sector.

Commissioner Ervin seconded by Commissioner Schilling moved to approve Council Decision Request 2008-905, approving the re-appointments of Scott Claypool, Beth Hildebrandt, Janahn Kolden, Julie Wilkerson, and Scott Gradle for one-year terms to the Mattoon Arts Council expiring on September 30, 2009.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Commissioner Hall seconded by Commissioner Ervin moved to adopt Resolution 2008-2755, approving the local letting for restoration of the Depot with IDOT; and authorizing the City to advance funds for all approved pay requests and submit those pay requests for grant reimbursement from IDOT.

CITY OF MATTOON, ILLINOIS

RESOLUTION 2008-2755

**A RESOLUTION APPROVING A REQUEST TO THE
ILLINOIS DEPARTMENT OF TRANSPORTATION FOR A LOCAL
LETTING IN ORDER TO SEEK FAIR AND OPEN BIDDING STANDARDS
FOR THE RESTORATION OF THE HISTORIC ILLINOIS CENTRAL
DEPOT AND AUTHORIZING THE CITY OF MATTOON TO ADVANCE
FUNDS FOR ALL APPROVED PAY REQUESTS SUBMITTED BY
CONTRACTORS AND SUB-CONTACTORS AND AUTHORIZING
THE CITY ADMINISTRATOR TO SUBMIT SAID PAY REQUESTS FOR**

**GRANT REIMBURSEMENT FROM THE HIGH PRIORITY PROJECT
(HPP) SENATE BILL (SB), LINE 4116 EARMARKED FUNDING FROM
THE ILLINOIS DEPARTMENT OF TRANSPORTATION**

WHEREAS, the City of Mattoon is committed to renovation and redevelopment of the community's intermodal transportation sector, and

WHEREAS, the City has previously secured federal Earmark Funding from the SAFETY-LOU program included in the High Priority Project (HPP) Senate Bill (SB) Line 4116 for the renovation of the Historic Illinois Central Depot, and

WHEREAS, the City has previously engaged the services of the Architectural Consulting firm of Hance-Utz & Associates Inc. to develop plans and specifications for renovation of the Historic Illinois Central Depot, and

WHEREAS, the City relies upon the Architect for technical assistance and expert advice in regard to drafting, advertising, construction management, standards for bidding proposals, approval of pay requests, and other matters relating to the completion of the Depot Restoration project, and

WHEREAS, Hance-Utz & Associates has advised the City to request authorization from the Illinois Department of Transportation to hold a Local Letting to receive sealed bid proposal and to waive pre-qualification standards for bidders submitting proposals for the renovation of the Historic Illinois Central Depot, and

WHEREAS, the Illinois Department of Transportation will further require the City to advance funds for pay requests approved by Hance-Utz & Associates to Contractors and Sub-Contractors for work completed on the Depot restoration project in accordance with Illinois Department of Transportation procedure for Local Bid Lettings.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF MATTOON, COLES COUNTY, ILLINOIS:

1. The Mayor is hereby authorized to send a written request for a Local Letting to receive sealed bid proposals and to waive Illinois Department of Transportation contractor pre-qualification requirements.
2. Once a construction contract(s) are awarded, the City shall advance funds for contractor pay requests approved by Hance-Utz & Associates serving as the City's Architect and construction manager.
3. The City Administrator in conjunction with Hance-Utz & Associates shall seek reimbursement from the Illinois Department of Transportation from the High Priority Project (HPP) SAFETY-LOU funds identified in Senate Bill (SB) Line 4116 for the renovation of the Historic Illinois Central Depot as necessary to move forward with this endeavor.

Upon motion by Commissioner Hall, seconded by Commissioner Ervin, adopted this 16th day of September, 2008, by a roll call vote, as follows:

AYES (Names):	<u>Commissioner Ervin, Commissioner Hall,</u> <u>Commissioner McKenzie, Commissioner Schilling,</u> <u>Mayor Cline</u>
NAYS (Names):	<u>None</u>
ABSENT (Names):	<u>None</u>

Approved this 16th day of September, 2008.

/s/ David W. Cline
David W. Cline, Mayor
City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM:

/s/ Susan J. O'Brien
Susan J. O'Brien, City Clerk

/s/ J. Preston Owen
J. Preston Owen, City Attorney

Recorded in the Municipality's Records on September 17, 2008.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Mayor Cline seconded by Commissioner Hall moved to approve Council Decision Request 2008-906, approving the appointment of Clarissa "Lissa" Skocy to the Mattoon Public Library Board with a term expiring 06-30-11 to replace Myrna Voudrie.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Commissioner Ervin seconded by Commissioner Schilling moved to approve Council Decision Request 2008-907, approving a \$6,000.00 grant by the Tourism Advisory Committee from hotel/motel tax funds to the American Legion Post 88 for an Inaugural Homecoming for Sons of the American Legion National Commander Tommy Cisna to be held November 7-9, 2008.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Mayor Cline seconded by Commissioner McKenzie moved to adopt Special Ordinance 2008-1295, approving the variance for the front setback at 220 Wabash Avenue to allow for a replacement and enlargement of a garage.

**CITY OF MATTOON, ILLINOIS
SPECIAL ORDINANCE NO. 2008-1295**

**AN ORDINANCE GRANTING A VARIANCE FROM BUILDING SET BACK REQUIREMENTS TO ENABLE
CONSTRUCTION OF AN ACCESSORY BUILDING IN THE NORTHWEST CORNER OF THE LOT AT 220 WABASH
AVE.**

WHEREAS there has been filed a written Petition by Larry Griffith for a variance, respecting the property legally described as:
Lot seven (7) of Block eleven (11) in Lumpkin Heights of Lafayette Township,
commonly known as 220 Wabash, City of Mattoon, Coles County, Illinois.

WHEREAS, said petition requests that a variance be granted pursuant to applicable ordinances of the municipality to allow construction of a new accessory building northwest of the house and reduce the front yard setback to zero feet on 3rd Street; and

WHEREAS the zoning code requires a 25-foot front yard setback from both streets on through lots in R1, Single Family Residence Zoning District; and

WHEREAS the Zoning Board of Appeals held a properly noticed, public hearing on September 2nd, 2008 regarding petitioner's request for said variance; and

WHEREAS both the Planning Commission for the City of Mattoon, Coles County, Illinois, and the Zoning Board of Appeals for the City of Mattoon, Coles County, Illinois, have recommended that the requested variance be granted; and

WHEREAS the City Council for the City of Mattoon, Coles County, Illinois, deems that the recommended variance is in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MATTOON, COLES COUNTY,

ILLINOIS, as follows:

Section 1. Pursuant to enabling authority provided at Section §159.05 of the Mattoon Code of Ordinances, the property legally described as aforesaid, be and the same is granted a variance of the front yard setback requirement to allow a zero setback on North 3rd Street to enable construction of an accessory building northwest of the house at 220 Wabash Ave.

Section 2. This ordinance shall be deemed published as of the day of its adoption and approval by the City Council.

Section 3. This ordinance shall be effective upon its approval as provided by law.

Section 4. The City Clerk shall make and file a duly certified copy of this ordinance with the Clerk and Recorder's Office of Coles County, Illinois.

Upon motion by Mayor Cline, seconded by Commissioner McKenzie, adopted this 16th day of September, 2008, by a roll call vote, as follows:

AYES (Names):	<u>Commissioner Ervin, Commissioner Hall,</u> <u>Commissioner McKenzie, Commissioner Schilling,</u> <u>Mayor Cline</u>
NAYS (Names):	<u>None</u>
ABSENT (Names):	<u>None</u>

Approved this 16th day of September, 2008.

/s/ David W. Cline
David W. Cline, Mayor
City of Mattoon, Coles County, Illinois

ATTEST: APPROVED AS TO FORM:

<u>/s/ Susan J. O'Brien</u> Susan J. O'Brien, City Clerk	<u>/s/ J. Preston Owen</u> J. Preston Owen, City Attorney
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Recorded in the Municipality's Records on September 17, 2008.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Commissioner Hall seconded by Commissioner Ervin moved to approve Council Decision Request 2008-908, approving the plan and bid specifications for the 2417 Lake Land Blvd Sewer Extension Project, and authorizing the solicitation of competitive bids.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Mayor Cline seconded by Commissioner McKenzie moved to adopt Ordinance 2008-5261, approving the Electric Utility Franchise Agreement with Ameren CIPS.

ORDINANCE NO. 2008 - 5261

AN ORDINANCE

EXTENDING THE AUTHORIZATION TO

Central Illinois Public Service Company
d/b/a **AmerenCIPS**

ITS SUCCESSORS AND ASSIGNS

TO CONSTRUCT, OPERATE AND MAINTAIN
AN ELECTRIC UTILITY SYSTEM

IN THE

City of Mattoon

COUNTY OF COLES

AND
STATE OF ILLINOIS

PASSED

September 16, 2008

EXPIRES

September 16, 2028

**CITY OF MATTOON, ILLINOIS
ORDINANCE NO. 2008 - 5261**

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF 20 YEARS TO AMERENCIPS, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, REMOVE, EXTEND, MAINTAIN AND OPERATE AN ELECTRIC UTILITY SYSTEM IN THE CITY OF MATTOON, COUNTY OF COLES AND STATE OF ILLINOIS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MATTOON, COUNTY OF COLES, AND THE STATE OF ILLINOIS, AS FOLLOWS:

SECTION 1. It is the intent of the parties by this Ordinance to extend for an additional term, subject to the terms and conditions here stated, the authorization to AmerenCIPS, its successors and assigns, to construct, operate and maintain an electric utility system within the City as originally authorized by an Ordinance No. 3804 approved on March 6th, 1956, and extended per Special Ordinance No. 2006-1109 on March 6th, 2006. The parties acknowledge that by doing so they are continuing an existing relationship authorizing the services of a utility for the provision of electric energy and other purposes within the City for the benefit of its citizens and residents as well as other consumers of electric energy located within its corporate limits. For purposes of construing the terms, rights and obligations of the parties this authorization is granted pursuant to Section 14 of the Electric Supplier Act, 220 ILCS 30/14, and the Illinois Municipal Code. 65 ILCS 5-1-1-1, et seq.

SECTION 2. There is hereby given and granted to AmerenCIPS, its successors and assigns (hereinafter referred to as the "Company"), the right, privilege and authority to construct, operate, maintain and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the City of Mattoon (hereinafter referred to as "Municipality"), an electric utility system for the transmission, distribution and/or sale of electric energy and other purposes (the "System"), together with the right, privilege and authority to erect, construct, install, operate and/or maintain all poles, conductors, wires, cables, conduits, equipment and/or other apparatus as may be necessary or convenient for the System, in, upon, along, over, under, through and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way and/or other public places.

SECTION 3. All poles and other equipment placed or installed under this Ordinance in streets, alleys, avenues and other public places, shall be so placed as not to interfere unnecessarily with travel on such streets, alleys, avenues and other public places. All poles and other equipment placed or installed under this Ordinance shall be so located as not to injure unnecessarily any pipes, conduits, sewers, drains, pavement or other like public improvements, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof and in default thereof said Municipality may repair such damage and charge the cost thereto, and collect the same from, the Company. All facilities of Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

When any street, avenue or other public place shall be graded, curbed, paved or otherwise changed so as to make the resetting or relocation of any poles or other equipment placed or installed under this Ordinance necessary, the Company shall make such resetting or relocation, at the Company's cost and expense. Municipality shall provide the Company with a suitable location for the resetting or relocation of such poles or other equipment, and the Company's obligation shall be limited to resetting or relocating poles or other equipment of the same type and configuration as the displaced poles or other equipment. Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality, and the establishment by the Municipality of the permanent grade at the new location.

SECTION 4. In order for the Company to render efficient, safe and continuous services, it will be necessary for Company to conduct vegetation management activities, including the trimming or pruning and cutting down of the trunks and branches of trees and/or vines and shrubs along or over the streets, sidewalks, alleys, avenues, squares, bridges and other public places in said Municipality, and areas dedicated to the Municipality for public utility use, wherever the same are likely to interfere with its equipment; therefore, Company is hereby granted the right to conduct such vegetation management activities so as to enable it to erect, operate and maintain its equipment in a regular and consistent form and manner and to enable it to provide the most efficient, safe and continuous service that the circumstances will permit; provided, however, that Company shall exercise proper care and discretion in its vegetation management activities. Company shall conduct its vegetation management activities in accordance with applicable law, including without limitation, 220 ILCS 5/8-505.1, and any amendments thereto. Notwithstanding the foregoing, to the extent applicable law may be superceded or modified by an agreement between Municipality and Company, Municipality and Company reserve the right to enter into such an agreement.

SECTION 5. The rates to be charged by the Company for electric service rendered under this Ordinance shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by this Ordinance, in the event of conflict herewith, shall govern.

SECTION 6. As a further consideration for the rights, privileges and authorities granted by this ordinance, the Company shall, in Year 1 of the agreement, furnish Municipality compensation in the amount of \$31,950, payable within 30 days of the acceptance of this ordinance by the Municipality. In subsequent years, payment will be made within 30 days of the anniversary date of the ordinance on the following graduated scale: Year 2 - \$55,675; Year 3 - \$79,400; Year 4 - \$103,125; and Year 5 and all remaining years - \$126,855.

SECTION 7. Municipality may request a revision to the compensation amount after five years from the date of passage of this Ordinance if Municipality has a reasonable belief that its population has increased or decreased by 3% or more. Municipality must request the revision at least 60 days prior to the next anniversary date. If Company confirms that the number of customers served by the System within Municipality's corporate limits has increased or decreased by 3% or more, the compensation amount will be revised by that percentage for the next and succeeding payments. Municipality may request similar revisions to compensation amounts under these criteria in additional five year period throughout the term of this Ordinance.

SECTION 8. If, at any time, during the term of this contract, Municipality permits another entity or person to provide electric distribution or similar services, and Company reasonably believes the other entity or person is granted more favorable treatment, terms, or conditions, then Company shall notify Municipality of such treatment, terms, or conditions. Upon receipt of such notice, Municipality and Company shall negotiate in good faith to amend this ordinance to provide Company such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and entity or person receiving the more favorable treatment, terms or conditions.

SECTION 9. The Company shall be exempt from any special tax, assessment, license, rental or other charge during

the term of this Ordinance, on all poles, conductors, wires, cables, conduits, equipment and other apparatus placed in the streets, alleys, avenues, bridges, easements, rights of way or other public places within the corporate limits of Municipality.

SECTION 10. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively in the same manner.

SECTION 11. This Ordinance shall confer no right, privilege or other authority on Company, its successors or assigns, unless Company shall within ninety (90) days after due notice to the Company of the enactment of this Ordinance, file with the City Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of ninety (90) days, all rights, privileges, and authority herein granted shall become null and void.

SECTION 12. All rights, privileges and authority given and granted by this Ordinance are granted for a term of 20 years from and after the acceptance of this Ordinance as hereinafter provided (the "Initial Term"), and thereafter on a year-to-year basis (each a "Subsequent Term") unless either the Company or Municipality notifies the other in writing of its desire to terminate this Ordinance at least six (6) months prior to the expiration of the Initial Term or any Subsequent Term.

SECTION 13. The Municipality acknowledges that Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property or places as authorized by this Ordinance nor service rendered by Company in said Municipality shall be treated as use solely of the rights, permission and provided for by this Ordinance and in no way shall indicate none-use of any right, permission or authority vested in the Company independent of this Ordinance. In the event the Municipality vacates any streets, avenues, alleys, easements, rights of way, bridges or other public places during the term of this Ordinance, Municipality agrees to reserve unto Company the rights, privileges and authority herein given and granted to the Company in upon, under, along, over and across each and all of such vacated premises which are at the same time in use by the Company.

SECTION 14. All ordinance and parts of ordinance in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SECTION 15. This Ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Company to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading and repair of its constructed facilities. Company shall provide notice excavation hereunder in accordance with the Illinois Underground Utility Damage Prevention Act (220 ILCS 50/1, et seq.)

SECTION 16. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 17. Any conflict between the Franchise Ordinance and the provisions contained in the Electric Service Customer Choice and Rate Relief Law of 1997 (Public Act 90-561) will be resolved by giving the state statute mandatory priority over any contrary language contained in the Franchise Ordinance.

SECTION 18. This Ordinance shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the City Clerk according to the terms prescribed herein and as provided for in Section 12 and in IL Rev 35 ILCS 645/5-4. This Ordinance shall be in full force from and after its passage, approval and ten (10) day period of publication in the manner provided by law.

Upon motion by Mayor Cline, seconded by Commissioner McKenzie, adopted this 16th day of September, 2008, by a roll call vote, as follows:

AYES (Names): Commissioner Ervin, Commissioner Hall,
Commissioner McKenzie, Commissioner Schilling

Mayor Cline

NAYS (Names): None

ABSENT (Names): None

Approved this 16th day of September, 2008.

/s/ David W. Cline
David W. Cline, Mayor
City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM:

/s/ Susan J. O'Brien
Susan J. O'Brien, City Clerk

/s/ J. Preston Owen
J. Preston Owen, City Attorney

Recorded in the Municipality's Records on September 17, 2008.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Mayor Cline seconded by Commissioner Hall moved to adopt Ordinance 2008-5262, approving the Gas Utility Franchise Agreement with AmerenCIPS.

ORDINANCE NO. 2008 - 5262

AN ORDINANCE

EXTENDING THE AUTHORIZATION TO

Central Illinois Public Service Company
d/b/a **AmerenCIPS**

ITS SUCCESSORS AND ASSIGNS
TO CONSTRUCT, OPERATE AND MAINTAIN
A GAS UTILITY SYSTEM

IN THE

City of Mattoon

COUNTY OF COLES

AND

STATE OF ILLINOIS

PASSED **September 16, 2008**

EXPIRES **September 16, 2028**

CITY OF MATTOON, ILLINOIS
ORDINANCE NO. 2008 - 5262

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF 20 YEARS TO AMERENCIPS, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, REMOVE, EXTEND, MAINTAIN AND OPERATE A GAS UTILITY SYSTEM IN THE CITY OF MATTOON, COUNTY OF COLES AND STATE OF ILLINOIS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MATTOON, COUNTY OF COLES, AND THE STATE OF ILLINOIS, AS FOLLOWS:

SECTION 1. It is the intent of the parties by this Ordinance to extend for an additional term, subject to the terms and conditions here stated, the authorization to AmerenCIPS, its successors and assigns, to construct, operate and maintain a gas utility system within the city as originally authorized by an Ordinance No. 3804 approved on March 6th, 1956, and extended per Special Ordinance No. 2006-1109 on March 6th, 2006. The parties acknowledge that by doing so they are continuing an existing relationship authorizing the services of a utility for the provision of gas energy and other purposes within the City for the benefit of its citizens and residents as well as other consumers of gas energy located within its corporate limits.

SECTION 2. There is hereby given and granted to AmerenCIPS, its successors and assigns (hereinafter referred to as the "Company"), the right, privilege and authority to construct, operate, maintain and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the City of Mattoon (hereinafter referred to as "Municipality"), a gas utility system for the transmission, distribution and/or sale of gas energy and other purposes (the "System"), together with the right, privilege and authority to lay, erect, construct, install, operate and/or maintain all necessary mains, pipes, valves, equipment and/or other apparatus as may be necessary or convenient for the System, in, upon, along, over, under, through and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way and/or other public places.

SECTION 3. All mains, pipes, valves and apparatus shall, so far as practicable, be placed underground and shall be so located and laid as not to interfere with any pipes, conduits, sewers, drains, pavements or other public improvements existing at the time of such location, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof. There shall be no unnecessary obstruction to the streets, avenues, alleys and public places of said Municipality in the laying, installation, operation or maintenance of any said mains, pipes, valves or apparatus. All facilities of Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

SECTION 4. When any street, avenue, alley, bridge, easement, right of way and/or other public place, upon which or in which any facilities of Company have been placed, shall be graded, curbed, paved or otherwise changed by the Municipality so as to make the resetting or reconstruction of such facilities necessary, Company shall make such necessary change in construction at no cost to Municipality. Should it become necessary or should the Company desire to use conduits or other similar fixtures, Company shall make application to the Municipality for the establishment of permanent grades and such conduits or other similar fixtures shall not be installed until such permanent grades have been established. The Municipality agrees to establish promptly such permanent grades upon such application.

SECTION 5. The rates to be charged by the Company for gas service rendered under this Ordinance shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by this Ordinance, in the event of conflict herewith, shall govern.

SECTION 6. As a further consideration for the rights, privileges and authorities granted by this ordinance, the Company shall, in Year 1 of the agreement, furnish Municipality compensation in the amount of \$29,560, payable within 30 days of the acceptance of this ordinance by the Municipality. In subsequent years, payment will be made within 30 days of the anniversary date of the ordinance on the following graduated scale: Year 2 - \$35,720; Year 3 - \$41,880; Year 4 - \$48,040; and Year 5 and all remaining years - \$54,195.

SECTION 7. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively in the same manner.

SECTION 8. This Ordinance shall confer no right, privilege or other authority on Company, its successors or assigns, unless Company shall within ninety (90) days after due notice to the Company of the enactment of this Ordinance, file with the

City Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of ninety (90) days, all rights, privileges, and authority herein granted shall become null and void.

SECTION 9. All rights, privileges and authority given and granted by this Ordinance are granted for a term of 20 years from and after the acceptance of this Ordinance as hereinafter provided (the "Initial Term"), and thereafter on a year-to-year basis (each a "Subsequent Term") unless either the Company or Municipality notifies the other in writing of its desire to terminate this Ordinance at least six (6) months prior to the expiration of the Initial Term or any Subsequent Term.

SECTION 10. The Municipality acknowledges that Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property or places as authorized by this Ordinance nor service rendered by Company in said Municipality shall be treated as use solely of the rights, permission and authority provided for by this Ordinance and in no way shall indicate non-use of any right, permission or authority vested in the Company independent of this Ordinance. In the event the Municipality vacates any streets, avenues, alleys, easements, rights of way, bridges or other public places during the term of this Ordinance, Municipality agrees to reserve unto Company the rights, privileges and authority herein given and granted to the Company in upon, under, along, over and across each and all of such vacated premises which are at the same time in use by the Company.

SECTION 11. All ordinance and parts of ordinance in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SECTION 12. This Ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Company to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading and repair of its facilities. Except in cases of emergency, prior to engaging in any excavation activity that is expected to create an obstruction or other hazardous condition in any street avenue, alley or public place, the Company shall notify Municipality of the location and extent of any such activity as soon as practicable after the emergency has been abated.

SECTION 13. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 14. If, at any time, during the term of this contract, Municipality permits another entity or persons to provide gas distribution or similar services, and Company reasonably believes the other entity or person is granted more favorable treatment, terms or conditions the Company shall notify Municipality of such treatment, terms or conditions. Upon receipt of such notice, Municipality and Company shall negotiate in good faith to amend this ordinance to provide Company such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and entity or person receiving the more favorable treatment, terms or conditions.

SECTION 15. The Company shall be exempt from any special tax, assessment, license, rental or other charge during the term of this Ordinance, on all mains, pipes, valves, equipment and other apparatus placed under the streets, alleys, avenues, bridges, easements, rights of way or other public places within the corporate limits of Municipality.

SECTION 16. This Ordinance shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the City Clerk according to the terms prescribed herein and as provided for in Section 12 and in IL Rev 35 ILCS 645/5-4. This Ordinance shall be in full force from and after its passage, approval and ten (10) day period of publication in the manner provided by law.

Upon motion by Mayor Cline, seconded by Commissioner Hall, adopted this 16th day of September, 2008, by a roll call vote, as follows:

AYES (Names): Commissioner Ervin, Commissioner Hall,
 Commissioner McKenzie, Commissioner Schilling,
 Mayor Cline

NAYS (Names): None

ABSENT (Names): None

Approved this 16th day of September, 2008.

/s/ David W. Cline
David W. Cline, Mayor
City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM:

/s/ Susan J. O'Brien
Susan J. O'Brien, City Clerk

/s/ J. Preston Owen
J. Preston Owen, City Attorney

Recorded in the Municipality's Records on September 17, 2008.

Mayor Cline opened the floor for questions or comments. No questions or comments.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

Commissioner McKenzie seconded by Commissioner Schilling moved to adjourn at 7:59 p.m.

Mayor Cline declared the motion carried by the following vote: YEA Commissioner Ervin, YEA Commissioner Hall, YEA Commissioner McKenzie, YEA Commissioner Schilling, YEA Mayor Cline.

/s/ Susan J. O'Brien
City Clerk